

**COMMENTS IN RESPONSE TO THE EXAMINER'S REJECTION**

The Examiner has rejected, *inter alia*, independent claims 1, 11, 26, 38, 57, and 58 as being anticipated by U.S. patent number 5,920,701 to Miller et al. (*Miller*). The Examiner has also rejected all other pending claims as either being anticipated by *Miller* or obvious as the result of a combination of *Miller* with U.S. patent number 6,560,651 to Katz et al. (*Katz*); U.S. patent number 6,061,504 to Tzelnic et al. (*Tzelnic*); U.S. patent number 6,052,710 to Saliba et al. (*Saliba*) and/or U.S. patent number 6,775,655 to Peinado et al. (*Peinado*). Applicants respectfully traverse these rejections of the independent claims and certain of the dependent claims as set forth below.

**Independent Claim 1**

The Examiner continues to find claim 1 anticipated by *Miller*. The Applicants have amended claim 1 for the sake of clarity in hopes of better emphasizing how Applicants' claimed invention differs from the disclosure of *Miller*. Amended claim 1 now recites:

A method for transferring files among devices in a network, comprising:  
requesting via a destination device a transfer of a file from a source device;  
scheduling the transfer of the file from the source device to the requesting destination device, wherein the transfer is scheduled to be completed by a deadline; and  
transferring the file from the source device to the destination device, wherein the file transfer from the source device to the requesting destination device is complete by the scheduled deadline.

*Miller* does not teach a destination device requesting the transfer of a file from a source device. The Examiner asserts that step 100 of Figure 3 evidences such a request while element 22<sup>1</sup> of Figure 1 and col. 4, l. 56-69 evidence the file at the source device.

---

<sup>1</sup> As the Examiner later refers to a destination device as being taught by *Miller* (Fig. 1, 22) on page 3 of the Final Office Action, the Applicant presumes the Examiner meant to reference content source 12 or 14.

Step 100 of Figure 3 in *Miller* is described at col. 6, l. 8-10, wherein "the scheduling of a data transmission from the content sources 12, 14 to the replicated server 16, 18, 20 commences in step 100." Continuing, *Miller* notes that the "scheduler 10 receive[s] signals via the network from the content sources 12, 14. The signals notify the scheduler 10 of the existence of data, as well as the transfer parameters of the content source 12, 14." Col. 6, l. 10-14 (emphasis added). In *Miller*, the destination device is not requesting the delivery of information. Instead, the content source of *Miller* (12, 14) is notifying the scheduler of the existence of information and that it must be delivered by a particular time as is evidenced by *Miller*'s discussion of "content source 12, 14 will set a desired delivery time depending on the frequency at which an update is needed." Col. 6, l. 26-28. There is no request for information by a destination from a source as is claimed in the present application but instead a notification of the need to transfer content from the source, that notification being made by the source.

The Applicants note this argument was previously advanced but found not to be persuasive by the Examiner. See *Amendment A*, 15-16; see also *Final Office Action*, 15-16. The Examiner, in addition to reiterating his primary arguments, further referenced col. 3, l. 45-54 of *Miller* as evidencing this claimed limitation. Col. 3 of *Miller*, as referenced by the Examiner, further supports the Applicants' argument in that the scheduler 10 receives instructions from the data sources with regard to when transmissions of data must take place. Again, *Miller* fails to evidence a destination device requesting the transfer of a file from a source device. As *Miller* fails to teach each and every limitation of claim 1, *Miller* cannot be said to anticipate and the Examiner's rejection is overcome. See *Southwall Technologies, Inc. v. Cardinal, IG Co.*, 54 F.3d 1570, 1575 (Fed. Cir. 1995).

Similarly, *Miller* does not teach the second limitation of claim 1 with regard to scheduling the transfer of the file from the source device to the requesting destination device within a deadline. As noted by the Examiner's reference to *Miller*, "scheduler 10 . . . communicates with a plurality of content sources 12, 14 over a communication network 24 and schedules data transmission from the content sources 12, 14 to one or more replicated servers 16, 18, 20." Col. 4, l. 36-40. In order for the replication server to

constitute a destination device—which the Applicants contend is not the case if a replication server and a destination device are presumed to take their ordinary and customary meaning per *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003)—then the replication server must also make the initial transfer request. As noted above, the replication server makes no such request. Instead, the content source informs the scheduler of the need to transmit information to the replication server whereby the scheduler identifies a particular time frame to do so. Again, as *Miller* fails to teach each and every limitation of claim 1, *Miller* cannot be said to anticipate and the Examiner's rejection is overcome. See *Southwall*, 54 F.3d at 1575.

Finally, the Examiner continues to assert that *Miller* teaches transferring the file from the source (Figure 1, element 16) to the destination (Figure 1, element 22) in accordance with the scheduled delivery time. See *Final Office Action*, 3. The Applicants again reference the fact that any such transfer is not from a source device to a requesting destination device but an intermediate replication server (i.e., source 12, 14 to server 16, 18, 20) or replication server to a subscriber (i.e., server 16, 18, 20 to subscriber 22<sub>N</sub>). If the Examiner advances the first scenario, then the delivery is not the requesting destination device. If the Examiner advances the second scenario, then the delivery is not from the source device. In either case, the limitation is not disclosed by *Miller*.

The Applicants advanced a similar argument in their previous response; that argument was found not to be persuasive. See *Amendment A*, 16-17; see *Final Office Action*, 16. The Applicants note that the Examiner's counter to the Applicants' previous argument is merely a reiteration of the Examiner's initial rejection. The Applicants, again, respectfully suggest the Examiner's rejection has been overcome in that *Miller* does not teach each and every limitation of the Applicants' claimed invention. See *Southwall*, 54 F.3d at 1575.

**Claim 2**

The Examiner also rejects claims 2 as being anticipated by *Miller*. *Final Office Action*, 5. *Miller* teaches determining bandwidth between a content source and a replication server. There is no teaching of determination of bandwidth between a content source and the destination device making a request for the transfer of a file. As such, the Examiner's rejection of claim 2 is overcome.

**Claim 3**

The Examiner rejected claim 3 as being obvious in light of *Katz*. See *Final Office Action*, 9. Specifically, the Examiner contends *Katz* to teach determining available storage at a destination device. See *Final Office Action*, 9. Applicants respectfully traverse as *Katz* states "the user is prevented from selecting digital information content larger than the available memory of playback device." Col. 15, l. 15-17. This is nothing more than a statement of physical/technical limitation of *Katz*. There is no disclosure or suggestion of actually determining the available storage at a device (e.g., how many MB are available?) instead of being prohibited from storing a data objects that exceeds the storage capacity of a device. As such, the Applicants contend the Examiner's rejection is overcome.

**Claim 4**

The Examiner also rejects claims 4 as being anticipated by *Miller*. *Final Office Action*, 5. The Applicants respectfully traverse as *Miller* teaches at col. 7, l. 20 that a content server hosting *USA Today* requires the transmission of 13,450 kb. This disclosure in no way teaches a user at a requesting destination device specifying a deadline as is claimed in the present application. As such, the Examiner's rejection of claim 4 is overcome.

**Claims 5 and 6**

The Examiner also rejects claims 5 as being anticipated by *Miller*. *Final Office Action*, 5-6. The Applicants respectfully traverse. *Miller* teaches the scheduler 10 obtaining "the total amount of content data requested for transmission." Col. 2, l. 16-17 (emphasis added). Determining an amount is not the same as determining an actual file as is claimed in the present invention. For example, the scheduler could determine that a total of 1MB of data needs to be transferred. This does not, however, teach the identification of a particular file or files that constitute the 1MB of data. As such, the Examiners rejection of claim 5 is overcome.

*Miller*, at col. 5, l. 19-22 also fails to teach identify a user identifying the file to be transferred. A similar argument pertains to col. 7, l. 20 as *Miller* merely identifies a file at the source—*USA Today*. This does not indicate the selection of a file by a user of the requesting destination device. As such, the Examiner's rejection of claim 6 is also overcome.

**Claim 7**

The Examiner also rejects claims 7 as being anticipated by *Miller*. *Final Office Action*, 6. The Applicants respectfully traverse. *Miller* discloses a table of content with data reflecting a request for delivery and the time; the date and time of delivery; the size of the content to be delivered and the priority of that content. This is no way teaches the Applicants' claimed pre-fetch module that comprises "pre-fetch algorithms 360 that are configured to request delivery of content without a specific request from the user." *Specification*, p. 11 at l. 2-3; see also *Brookhill-Wilk*, 334 F.3d at 1298 (concerning the ordinary meaning of claim terminology). A mere listing of a table setting forth dates and delivery times as determined by the scheduler 10 of *Miller* relative a content source does not anticipate the Applicants' claimed pre-fetch module located at the destination device. As such, the Examiner's rejection of claim 7 is overcome.

**Claim 8**

The Examiner also rejects claim 8 as being anticipated by *Miller*. *Final Office Action*, 6. The Applicants respectfully traverse. *Miller*'s discussion of delivery times and bandwidth factors do not evidence a pre-fetch module identifying files based on behavior of the user in part because *Miller* does not disclose a pre-fetch module and, further, because the need for the source content to be delivered at different types due to bandwidth limitations does not evidence any aspect of user behavior. As such, the Examiner's rejection of claim 8 is overcome.

**Claim 9**

The Examiner rejects claim 9 as being anticipated by *Miller*. See *Final Office Action*, 6. The Applicants respectfully traverse in that the designation of *USA Today* as high priority content by the content source—not the user nor at the destination device nor a pre-fetch module at the destination device—does not meet the limitations as recited by the Applicants in claim 9.

**Claim 10**

The Applicants assert the Examiner's rejection of claim 10 to be overcome in that no other device is capable, in *Miller*, of requesting data from the source device. That is, the source device identifies itself as needing to transfer content to a replication server. The replication server never makes the request for transmission as all transmission requests are initiated by the source content. For these reasons, the Examiner's rejection is overcome.

**Independent Claim 11**

Independent claim 11 is allowable for at least the reasons set forth with regard to claim 1. This includes the fact that *Miller* does not teach a destination device sending a request for a file to a source device and the source device subsequently transmitting that file to the requesting destination device in accordance with a deadline. In contrast,

*Miller* teaches the source device requesting the transfer of content to the destination device.

**Claim 12**

*Miller* does not disclose a destination device requesting the transfer of a file. As such, there can be no deadline for delivery of the file to the requesting destination device as all transfers are requested by the source file. As such, the Examiner's rejection of claim 12 is overcome.

**Claim 13**

Claim 13 is allowable for at least the same reasons set forth with regard to claim 4 above.

**Claim 14**

Claim 14 is allowable for at least the same reasons as set forth with regard to claim 5 above.

**Claim 15**

Claim 15 is allowable for at least the same reasons as set forth with regard to claim 7 above.

**Claim 16**

Claim 16 is allowable for at least the same reasons as set forth with regard to claim 8 above.

**Claim 17**

Claim 17 is allowable for at least the same reasons as set forth with regard to claim 9 above.

**Claim 18**

Claim 18 is allowable for at least the same reasons as set forth with regard to claim 2 as set forth above.

**Claim 19**

Claim 19 is rejected for the same reasons as claim 3. See *Final Office Action*, 9. As such, the Applicants contend claim 19 is allowable for at least the same reasons as claim 3.

**Claim 20**

As the Examiner has failed to evidence the anticipation or obviousness of the claim limitations in base claim 11, the Applicants contend the Examiner's rejection of claim 20 fails for at least the same reasons.

**Claim 21**

The Examiner contends *Miller* to teach a scheduling module at a source device. See *Final Office Action*, 7 (citing col. 4, l. 35-40). The Applicants respectfully traverse. As is clearly shown in Figure 1, scheduler 10 is a distinct and separate element from content sources 12, 14. See col. 4, l. 36-37. There is no teaching that the module is residing at the source device. The Examiner's rejection is, therefore, overcome.

**Claim 22**

The Examiner contends the placement of a scheduling module at a destination device to be taught by col. 5, l. 36-39 of *Tzelnic*. The Applicants traverse as *Tzelnic* discloses various operating systems "to provide a hot-failover redundant configuration." Col. 5, l. 37-38. The Examiner's equating an operating system to a scheduling module is without support. The scheduling module of the present invention (416) "produces optimum schedules for delivery of data files (content) to a destination device"—just as its name would suggest. *Specification*, [0032]; see *Brookhill-Wilk* 1, 334

F.3d at 1298 (concerning plain and ordinary meaning). The scheduling module of the present invention cannot be equated to an operating system, which is well known in the art to be a program that manages all other programs on a computing device. The Applicants therefore contend that the Examiner's rejection is overcome.

#### **Claim 23**

The Examiner rejected claim 23 contending *Tzelnic* to teach a scheduling module at both a source and destination device. See *Final Office Action*, 10. Applicant reiterates its argument as set forth in claim 22 and contends the present rejection to be overcome.

#### **Claim 24**

The Examiner contends claim 24 to be obvious in light of *Tzelnic*, which purportedly teaches a scheduling module residing in a cache device in the network. See *Final Office Action*, 10. The Examiner's reference to col. 2, l. 47-51 of *Tzelnic* discloses only a video file server (*i.e.*, a source device) with a built-in cache disk array.

Notwithstanding the fact that the Examiner's rejection would disregard the difference between a source device and a cache device, there still is no teaching or suggestion of implementing a scheduling module in the cache. As such, the Applicant contends the Examiner's rejection to be overcome.

#### **Claim 25**

The Examiner rejected claim 25 for the "same reasons as claims 23 and 24." *Final Office Action*, 10. For those reasons, the Applicants contend the present rejection to be overcome for at least the same reasons as claims 23 and 24.

#### **Independent Claim 26**

The Examiner continues to assert claim 26 to be anticipated by *Miller*. See *Final Office Action*, 3. Specifically, the Examiner contends *Miller* to disclose requesting a transfer of a file as purportedly evidenced by *Miller* by element 100 in Figure 3. As has

been previously noted, step 100 of Figure 3 in *Miller* (col. 6, l. 8-10) describes "the scheduling of a data transmission from the content sources 12, 14 to the replicated server 16, 18, 20." Continuing, *Miller* notes that the "scheduler 10 receives signals via the network from the content sources 12, 14. The signals notify the scheduler 10 of the existence of data, as well as the transfer parameters of the content source 12, 14." Col. 6, l. 10-14 (emphasis added).

In *Miller*, the destination device is not requesting the delivery of information as is claimed in the present application. Instead, the content source of *Miller* (12, 14) is notifying the scheduler of the existence of information and that it must be delivered by a particular time as is evidenced by *Miller's* discussion of "content source 12, 14 will set a desired delivery time depending on the frequency at which an update is needed." Col. 6, l. 26-28. There is no *request* for information by a destination from a source as is claimed in the present application but a notification of the need to transfer content from the source, that notification being made by the source.

Furthermore, *Miller* does not teach 'selecting a source device' as is presently claimed. Col. 4, l. 56-59 as cited by the Examiner only references delivering data to the replicated servers over a communications network. There is no indication of the selection of source device, that source device being selected for the purposes of subsequently delivering a particular file to the destination device.

The Applicants, again, respectfully suggest the Examiner's rejection has been overcome in that *Miller* does not teach each and every limitation of the Applicants' claimed invention. See *Southwall*, 54 F.3d at 1575.

#### **Claim 27**

Claim 27 has been cancelled without prejudice and the Examiner's rejection is therefore moot.

**Claim 28**

Claim 28 recites the destination device identifying a file for delivery, that selection being in accordance with a user subscription. The Examiner asserts the presently claimed identification of a file according to a user subscription to be disclosed by *Tzelnic*. See *Final Office Action*, 11. That portion of *Tzelnic* identified by the Examiner, however, concerns an admission control policy. Col. 2, l. 53-54. That policy determines "whether or not there exists sufficient resources in the cached disk array and stream servers to satisfy the [client] request . . . when there exist sufficient resources in the cached disk array and stream servers." Col. 2, l. 54-58. There is no mention of a user subscription; the Examiner's rejection is, therefore, overcome.

**Claim 29**

The Examiner asserts *Miller* to identify files to be transferred based on observations of user behavior. See *Final Office Action*, 6. Both portions of *Miller* cited by the Examiner fail to evidence *any* suggestion of user behavior. For example, col. 4 merely references multicasting of content whereas col. 9 references bandwidth factors and delivery times. There is no mention or suggestion of user behavior; the Examiner's rejection is, therefore, overcome.

**Claim 30**

The Examiner contends claim 30 to be anticipated by *Miller*. See *Final Office Action*, 7. As the Examiner has failed to evidence the anticipation of the claim limitations of base claim 26, the Applicants contend the Examiner's rejection of claim 30 fails for at least the same reasons.

**Claim 31**

The Applicants have cancelled claim 31 without prejudice; the Examiner's rejection is therefore moot.

**Claim 32**

The Examiner contends claim 32 to be anticipated by *Miller*. See *Final Office Action*, 6. As evidencing the teaching of the claimed user at a destination device causing the destination device to identify a file to be transferred, the Examiner refers to col. 7, l. 20. The portion of *Miller* cited by the Examiner refers to a *source server* seeking to transmit *USA Today* to a replication server. There is no teaching of a user at a destination device—much less a user at all—causing the identification of a file to be transferred. As such, the Applicants contend the Examiner's rejection to have been overcome.

**Claim 33**

*Miller* does not teach a user at a destination device determining a deadline for completion of a file transfer. See *Final Office Action*, 5 (citing col. 7, l. 20). The absence of this teaching is discussed in the context of claim 32. Furthermore, all scheduling decisions are made by a schedule manager 10 in *Miller* and not a user as asserted by the Examiner. As such, the Applicants contend the Examiner's rejection to have been overcome.

**Claim 34**

The Examiner contends claim 34 to be anticipated by *Miller*. See *Final Office Action*, 5. The Applicants respectfully traverse. *Miller* teaches determining bandwidth between a content source and a replication server. There is no teaching of determination of bandwidth between a content source and the destination device making a request for the transfer of a file. As such, the Examiner's rejection of claim 34 is overcome.

**Claim 35**

The Examiner contends claim 35 to be anticipated by *Miller*. See *Final Office Action*, 7. Claim 35 is dependent upon claim 26, which the Applicants contend to be allowable. Claim 35, therefore, is allowable for at least the same reasons as claim 26.

**Claim 36**

The Examiner contends claim 36 to be anticipated by *Miller*. See *Final Office Action*, 7. Claim 36 is dependent upon claim 26, which the Applicants contend to be allowable. Claim 36, therefore, is allowable for at least the same reasons as claim 26. As such, the Examiner's rejection of claim 36 is overcome.

**Claim 37**

The Examiner contends the cache device of claim 37 to be disclosed by *Tzelnic* and rejected for the same reasons as claim 23. See *Final Office Action*, 11. For these reasons, the Applicant contends the Examiner's rejection of claim 37 is overcome for at least the same reasons as claim 23.

**Independent Claim 38**

The Examiner contends claim 38 to be rejected for the same reasons as claim 11. See *Final Office Action*, 4. The Applicants contend claim 11 to be allowable. The Applicants contend claim 38 is therefore allowable for at least the same reasons as claim 11.

**Claim 39**

Claim 39 is dependent upon claim 38, with regard to which the Applicants contend the Examiner has failed to evidence the anticipation or obviousness of the claim limitation. As such, the Applications contends claim 39 is allowable for at least the same reasons as claim 38.

**Claim 40**

The Examiner contends *Miller* to teach a scheduling module at a source device. See *Final Office Action*, 7 (citing col. 4, l. 35-40). The Applicants respectfully traverse as is clearly shown in Figure 1. Scheduler 10 is a distinct and separate element from content sources 12, 14. See col. 4, l. 36-37. There is no teaching that the module is residing at the source device. The Examiner's rejection is, therefore, overcome.

**Claim 41-42**

The Examiner contends claims 41 and 42 to be rejected "for the same reasons as claim[s]" 22 and 23. See *Final Office Action*, 11. For this reason, the Applicants contend claims 41 and 42 to be allowable over the Examiner's rejection for at least the same reasons as claims 22 and 23.

**Claim 43**

The Examiner contends *Miller* to teach the limitation of a control server monitoring bandwidth. See *Final Office Action*, 8. Claim 43 depends from claim 42, which the Applicants contend is allowable. Claim 43 is allowable for at least the same reasons as claim 42.

**Claim 44**

The Applicants traverse the Examiner's assertion that *Peinado* teaches a server attaching DRM rules to content. See *Final Office Action*, 14. *Peinado* discloses a "license server . . . issu[ing] a license to a DRM system that is 'trusted.'" Col. 3, l. 6-7. There is no discussion of attaching DRM rules to content. Furthermore, the Examiner's purported motivation for making this combination is that "Peinado's use of Digital rights management rules would provide Miller's system a method of attaching (sic) license key to the transferred content." *Final Office Action*, 14. This is not a **motivation to combine** but, rather, the **result of the combination**. As the Examiner is aware, a *prima facie* case of obviousness requires a motivation to combine the references, that motivation being

found in the prior art. See *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). As the Examiner has not provided a motivation to combine, much less one found in the prior art, the Applicants contend the Examiner's rejection to be overcome.

#### **Claim 45**

The Examiner contends *Peinado* discloses a DRM module configured to implement digital rights management rules. See *Final Office Action*, 14. The Applicants respectfully traverse. *Peinado* discloses a DRM system that is implemented "[i]f the user is attempting to render digital content" wherein the user is directed to "a license server to obtain a license to render such digital content." Col. 2, l. 56-57, 58-59. *Peinado* is an end-user system and not a module for implementing DRM rules; that is, *Peinado* is a system for addressing a series of DRM rules that have already been implemented. *Peinado*, therefore, does not attach DRM rules to content. Furthermore, the Examiner contends the combination of the references to be motivated by providing a method of obtaining a license key. See *Final Office Action*, 15. Again, the Examiner's evidences a purported result and not a motivation to combine. As such, a *prima facie* case of obviousness has not been made and the Examiner's rejection is overcome.

#### **Claim 46**

Claim 46 is dependent upon claim 38 and is therefore allowable for at least the same reasons.

#### **Claim 47**

The Examiner contends *Miller* to teach a client as being embodied in a set-top box. There is no teaching of set-top box in *Miller*. While *Miller* does teach "computers, such as PCs or workstations"—these are a separately claimed element as found in claim 46. There is no teaching of a 'set-top box' and to assert that *Miller* discloses otherwise would be to ignore the importance of each and every limitation in the claim. Therefore, the Examiner's rejection is overcome.

**Claim 48**

The Examiner contends *Miller* to teach the server delivering content to a requesting client in accordance with a deadline. See *Final Office Action*, 8. *Miller* teaches delivery of content to an intermediate distribution server and not a requesting client, that delivery being made in accordance with a schedule determined by scheduling module 10. As such, *Miller* does not teach this claimed limitation and the Examiner's rejection is overcome.

**Claim 49**

The Examiner contends *Miller* to teach a pre-fetch module. *Miller* instead discloses a table of content with a data reflecting a request for delivery and the time; the date and time of delivery; the size of the content to be delivered and the priority of that content. This is no way teaches the Applicants' claimed pre-fetch module that comprises "pre-fetch algorithms 360 that are configured to request delivery of content without a specific request from the user." *Specification*, p. 11 at l. 2-3; see also *Brookhill-Wilk*, 334 F.3d at 1298 (concerning the ordinary meaning of claim terminology). A mere listing of a table setting forth dates and delivery times as determined by the scheduler 10 of *Miller* relative a content source does not anticipate the Applicants' claimed pre-fetch module located at the destination device. As such, the Examiner's rejection of claim 49 is overcome.

**Claim 50**

The Examiner contends claim 50 "is rejected for the same reasons as claim 37." See *Final Office Action*, 11. For this reason, the Applicants contend the Examiner's rejection is overcome for at least the same reasons as claim 37.

**Claim 51**

The Examiner contends claim 51 to be obvious in light of *Miller* in combination with *Tzelnic* in combination with *Saliba*. See *Final Office Action*, 13. The Applicants assert there to be a lack of motivation to combine the three references cited by the Examiner in that the Examiner states "Saliba's use of (sic) mini web server and browser would provide Miller's and Tzelnic's system a robust scheduler with local cache management of data transfer." *Final Office Action*, 13. Again, the Examiner evidences a purported result and not a motivation to combine. As such, a *prima facie* case of obviousness has not been made and the Examiner's rejection is overcome

**Claim 52**

The Examiner contends claim 52 "is rejected for the same reasons as claim 37." See *Final Office Action*, 11. For this reason, the Applicants contend the Examiner's rejection is overcome for at least the same reasons as claim 37.

**Claim 53**

The Examiner contends claim 53 "is rejected for the same reasons as claim 50." See *Final Office Action*, 12. For this reason, the Applicants contend the Examiner's rejection is overcome for at least the same reasons as claim 50.

**Claim 54**

The Examiner contends claim 54 "is rejected for the same reasons as claim 53." See *Final Office Action*, 12. For this reason, the Applicants contend the Examiner's rejection is overcome for at least the same reasons as claim 53.

**Claim 55**

The Examiner contends claim 55 "is rejected for the same reasons as claim 54." See *Final Office Action*, 12. For this reason, the Applicants contend the Examiner's rejection is overcome for at least the same reasons as claim 54.

**Claim 56**

The Examiner contends claim 56 "is rejected for the same reasons as claim 54." See *Final Office Action*, 12. For this reason, the Applicants contend the Examiner's rejection is overcome for at least the same reasons as claim 54.

**Independent Claim 57**

The Examiner contends claim 57 is rejected for at least the same reasons as claim 1. The Applicants contend claim 1 to be allowable. Therefore, the Applicants contend claim 1 is allowable for at least the same reasons as claim 1.

**Independent Claim 58**

The Examiner continues to reiterate those rejections of claim 58 as initially raised in the non-final office action of October 5, 2004. Applicants continue to traverse. Content servers 12 and 14 do not deliver content to subscribers 22. See, e.g., Figure 1. *Miller* also notes that "[d]ata delivered to the replicated servers 16, 18, 20 can be retransmitted to one or more subscribers 22<sub>1</sub>, 22<sub>2</sub>, 22<sub>3</sub>, . . . 22<sub>N</sub> of the content sources 12, 14 over further communications networks 26, 28." Col. 4, l. 56-59 (emphasis added). That is, content sources 12, 14 do not deliver content to the clients but to a replication server 16, 18, 20. Likewise, the subscribers 22<sub>1</sub>, 22<sub>2</sub>, 22<sub>3</sub>, . . . 22<sub>N</sub> of *Miller* are receiving content from replication servers 16, 18, 20 and not content sources 12, 14.

Additionally, the Examiner identifies a different 'plurality of servers' in the third claimed element (16, 18, 20) as they relate to a scheduling module than in the first claimed element (12, 14) of the presently claimed invention. The Examiner's references ignore the antecedent relationship between 'the plurality of servers' in the third element as they relate to 'a plurality of servers' in the first element. See MPEP § 2173.05(e).

Further, the scheduler 10 of *Miller* interacts with source servers 12, 14 and not replicated servers 16, 18, 20. See Col. 6, l. 10-14. As such, *Miller* does not disclose a scheduling module configured to determine schedules for delivery of content from the plurality of servers to the plurality of clients. *Miller* instead discloses a scheduler 10

configured to determine schedules for delivery of content from the content source 12, 14 to the replicated servers 16, 18, 20. As *Miller* fails to teach each and every limitation of claim 58, *Miller* cannot be said to anticipate claim 58 and the Examiner's rejection is overcome. See *Southwall*, 54 F.3d at 1575.

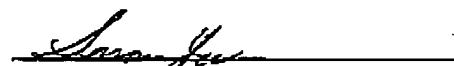
**CONCLUSION**

The Applicants have evidenced the failure of *Miller* to anticipate each of the independent claims of the present application. As a matter of law, every dependent claim that depends (directly or via another dependent claim) upon one of these independent base claims is also allowable. Notwithstanding, the Applicants have identified numerous novel and non-obvious aspects of the present claims in light of the Examiner's rejections. The Applicants have further evidenced the Examiner's failure to evidence a motivation to combine in a number of the Examiner's Section 103 rejections. As such, the Applicants contend the present application is allowable or otherwise in condition for an appeal to the Board of Patent Appeals and Interferences. The Examiner is invited to contact the Applicants' undersigned representative with any questions concerning this response.

Respectfully submitted,  
Ray Milkey et al.

August 15, 2005

By:

  
Susan Yee (Reg. No. 41,388)  
Carr & Ferrell LLP  
2200 Geng Road  
Palo Alto, CA 94303  
T: 650.812.3400  
F: 650.812.3444